

ORDINANCE NO. 3719

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING EDMONDS COMMUTE TRIP REDUCTION (CTR) PLAN AND IMPLEMENTING MEASURES AS REQUIRED BY RCW 70.94.527 BY AMENDING CHAPTER 17.95 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE; PROVIDING FOR SEVERABILITY; AND SETTING AN EFFECTIVE DATE.

WHEREAS, increases in the amount and rate of urban growth within the City of Edmonds have directly contributed to higher levels of traffic congestion and delay; and

WHEREAS, the public's health, safety and welfare are threatened by increases in vehicular travel and petroleum consumption that negatively impact traffic safety, air quality and neighborhood noise levels; and

WHEREAS, traffic congestion and delay harm the City's economy by impeding the delivery of goods and services and causing working hours to be lost; and

WHEREAS, the legislature has enacted the Commute Trip Reduction Law (RCW 70.94.521-555) which requires the City to establish commute trip reduction plans that require affected employers to prepare commute trip reduction programs to their employees;

WHEREAS, in 2006, the previous Commute Trip Reduction Plan expired and the Commute Trip Reduction Efficiency Act was enacted with new guidelines, requiring the adoption of a new Commute Trip Reduction Plan; WHEREAS, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO
ORDAIN AS FOLLOW:

Section 1: Chapter 17.95 of the Edmonds Community Development Code is hereby amended as follows:

Chapter 17.95

Commute Trip Reduction Plan

Sections:

- 17.95.010 Administration.
- 17.95.020 CTR plan.
- 17.95.030 Program compliance.
- 17.95.040 General.

17.95.010 Administration.

A. Title. This chapter shall be known as the "Commute Trip Reduction Ordinance of the City of Edmonds," and the requirements set forth in this chapter are applicable to all major employers defined herein.

B. Jurisdiction. These regulations shall apply to all major employers within the incorporated area of the city of Edmonds.

C. Purpose. The purpose of this chapter is to provide a method for compliance with the Washington State Commute Trip Reduction Law of 1991 (RCW 70.94.521 through 70.94.551), Chapter 202, Laws of 1991, and as amended in 2006 by the Commute Trip Reduction Efficiency Act. The Commute Trip Reduction law was passed to reduce traffic congestion, air pollution and dependency on fossil fuels through employer-based programs encouraging alternative commute methods to the single-occupant vehicle. The Commute Trip Reduction Ordinance shall not be used as a substitute for reviews of projects under city requirements for compliance with the State Environmental Policy Act (SEPA).

D. Administration. The director of the community services department or his/her designee shall have the duty and responsibility of administering the provisions of this chapter with the authority to promulgate rules and regulations to implement and administer this chapter. The community services department shall work with other departments to develop and implement an administrative process for enforcing this chapter.

E. Definitions. For the purpose of this chapter, the following definitions shall apply in the interpretation and enforcement of this chapter:

1. "Affected employee" means a full-time employee who begins his or her regular work day at a major employer work site between 6:00 a.m. and 9:00 a.m. (inclusive) on two or more weekdays for at least twelve continuous months. "Full-time employee" means a person other than an independent contractor, scheduled to be employed on a continuous basis for fifty-two weeks for an average of at least thirty-five hours per week.

2. "Affected urban growth area"

(A) An urban growth area, designated pursuant to RCW 36.70A.110, whose boundaries contain a state highway segment exceeding the one hundred person per hours of delay threshold calculated by the Washington State Department of Transportation, and any contiguous urban growth areas; and

(B) An urban growth area, designated pursuant to RCW 36.70A.110, containing a jurisdiction with a population over seventy thousand that adopted a commute trip reduction ordinance before the year 2000, and any contiguous urban growth areas; or

(C) An urban growth area identified by the Washington State Department of Transportation as listed in WAC 468-63-020(2)(b).

3. "Alternative mode" means any means of commute transportation other than that in which the single-occupant motor vehicle is the dominant mode, including telecommuting and compressed work weeks if they result in reducing commute trips.

4. "Alternative work schedules" means work schedules which allow employees to work their required hours outside of the traditional Monday to Friday, 8:00 a.m. to 5:00 p.m. schedule. Programs such as compressed work weeks that eliminate work trips for affected employees are an example.

5. "Base year" means the twelve-month period when the City of Edmonds determines an employer is required to comply with the CTR law. City of Edmonds uses this twelve-month period as the basis upon which it develops local commute trip reduction goals.

6. "Base year survey" or Baseline measurement" means the survey, during the base year, of employees at a major employer worksite to determine the drive-alone rate and vehicle miles traveled per employee at the worksite. The jurisdiction uses this measurement to develop commute trip reduction goals for the major employer. The baseline measurements must be implemented in a manner that meets the requirements specified by the City of Edmonds.

7. "Carpool" means a motor vehicle occupied by two to six people traveling together for their commute trip that results in the reduction of a minimum of one motor vehicle commute trip.

8. "Commute trips" means trips made from a worker's home to a work site during the peak period of 6:00 a.m. to 9:00 a.m. (inclusive) on weekdays.

9. "CTR guidelines" means the set of guidelines prepared by the Commute Trip Reduction Board in accordance with RCW 70.94.527. The city will use these guidelines to interpret and administer the Edmonds CTR ordinance.

10. "CTR Law" means the Commute Trip Reduction law passed by the Washington State Legislature in 1991 (Chapter 202, Laws of 1991) and codified in RCW 70.94.521 through 70.94.551, and amended in 1997 and 2006 requiring each county containing an urban growth area, designated pursuant to RCW 36.70A.110, and each city within an urban growth area with a state highway segment exceeding the one hundred person hours of delay threshold calculated by the department of transportation, as well as those counties and cities located in any contiguous urban growth areas, shall adopt a commute trip reduction plan and ordinance for major employers in the affected urban growth area.

11. "CTR plan" means city of Edmonds' plan and ordinance to regulate and administer the CTR programs of major employers within its jurisdiction.

12. "CTR program" means an employer's strategies to reduce affected employees' SOV use and VMT per employee.

13. "Commuter matching services" means a system that assists in matching commuters for the purpose of commuting together.

14. "Compressed work week" means an alternative work schedule in accordance with employer policy that regularly allows a full-time employee to eliminate at least one work day every two weeks by

working longer hours during the remaining days, resulting in fewer commute trips by the employee. This definition is primarily intended to include weekly and bi-weekly arrangements, the most typical being four 10-hour days or 80 hours in nine days, but may also include other arrangements.

15. "Custom bus/buspool" means a commuter bus service arranged to transport employees to work.

16. "Days" means calendar days, unless otherwise specified.

17. "Dominant mode" means the mode of travel used for the greatest distance of a commute trip.

18. "Drive-alone" means single-occupant vehicle.

19. "Employer" means a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual entity, whether public, nonprofit, or private, that employs workers.

20. "Edmonds" means the city of Edmonds.

21. "Exemption" means a waiver from CTR program requirements granted to an employer by the city of Edmonds based on unique conditions that apply to the employer or employment site.

22. "Flex-time" means an employer policy allowing individual employees some flexibility in choosing the time, but not the number, of their working hours to facilitate the use of alternative modes.

23. "Full-time employee" means a person other than an independent contractor, scheduled to be employed on a continuous basis for 52 weeks for an average of at least 35 hours per week.

24. "Goal" means a purpose toward which efforts are directed.

25. "Good faith effort" means that an employer has met the minimum requirements identified in RCW 70.94.531 and this chapter, and is working collaboratively with the city to continue its existing CTR program or is developing and implementing program modifications likely to result in improvements to its CTR program over an agreed upon length of time.

26. "Growth and transportation efficiency center (GTEC)" means a defined, compact, mixed-use urban center that contains jobs or housing and supports multiple modes of transportation. For the purpose of funding, a GTEC must meet minimum criteria established by the CTR Board under RCW 70.04.537, and must be certified by a regional transportation planning organization as established in RCW 47380.020.

27. "Implementation" means active pursuit by an employer of the CTR goals of RCW 70.94.521 through 70.94.551 and this chapter as evidenced by appointment of a transportation coordinator, distribution of information to employees regarding alternatives to SOV commuting, and commencement of other measures according to its approved CTR program and schedule.

28. "Jurisdiction's base year measurement" means the proportion of drive-alone commute trips by CTR commuters and commute trip vehicle miles traveled per CTR commuter on which commute trip reduction targets for the local jurisdiction shall be based. The jurisdiction's base year measurement, for those jurisdictions with an affected urban growth area as of March 1, 2007, shall be determined based on employee surveys administered in the 2006-2007 survey cycle. If complete employee survey data from

the 2006-2007 survey cycle is not available, then the base year measurement shall be calculated from the most recent and available set of complete employee survey data.

29. "Major employer" (formerly "affected employer") means a private or public employer, including state agencies, that employs one hundred or more full-time employees at a single worksite who begin their regular workday between 6:00 a.m. and 9:00 a.m. on weekdays for at least twelve months.

30. "Major worksite" means a building or group of buildings that are on physically contiguous parcels of land or on parcels of land separated solely by private or public roadways or rights-of-way, and at which there are one hundred or more full-time employees, who begin their regular workday between 6:00 a.m. and 9:00 a.m. on weekdays, for a least twelve continuous month.

31. "Mode" means the means of transportation used by employees, such as a single-occupant motor vehicle, ride share vehicle (carpool, vanpool), transit, ferry, bicycle, and walking.

32. "Peak period" means the hours from 6:00 a.m. to 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.

33. "Peak period trip" means any employee trip that delivers the employee to begin his or her regular work day between 6:00 a.m. and 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.

34. "Person hours of delay" means the daily person hours of delay per mile during the peak period of 6:00 a.m. to 9:00 a.m., as calculated using the best available methodology by the Washington State Department of Transportation.

35. "Proportion of single-occupant vehicle trips or SOV rate" means the number of commute trips made by single-occupant automobiles divided by the number of full-time employees.

36. "Single-occupant vehicle (SOV)" means a motor vehicle occupied by one employee for commute purposes, including a motorcycle. If there are other passengers occupying the motor vehicle, but the ages of these passengers are sixteen or under, the motor vehicle is still considered a "single-occupant vehicle" for measurement purposes.

37. "Single-occupant vehicle (SOV) trips" means trips made by affected employees in SOVs.

38. "Target" means a quantifiable or measurable value that is expressed as a desired level of performance, against which actual achievement can be compared in order to assess progress.

39. "Telecommuting" means the use of telephones, computers, or other similar technology to permit an employee to work from home, eliminating a commute trip, or to work from a work place closer to home, reducing the distance traveled in a commute trip by at least half.

40. "Transit" means a multiple-occupant vehicle operated on a for-hire, shared-ride basis, including bus, ferry, rail, shuttle bus, or vanpool.

41. "Transportation management organization (TMO)" means a group of employers or an association representing a group of employers in a defined geographic area. A TMO may represent employers within specific city limits, or may have a sphere of influence that extends beyond city limits.

42. "Vanpool" means a vehicle occupied by seven to 15 people traveling together for their commute trip that results in the reduction of a minimum of one motor vehicle trip

43. "Vehicle miles traveled (VMT) per employee" means the sum of the individual vehicle commute trip lengths in miles divided by the number of full-time employees.

44. "Week" means a seven-day calendar period, starting on Monday and continuing through Sunday.

45. "Weekday" means any day of the week except Saturday or Sunday.

46. "Writing, written, or in writing" means original signed and dated documents. Facsimile (fax) transmissions are a temporary notice of action that must be followed by the original signed and dated document via mail or delivery. [Ord. 2913 § 1, 1993].

17.95.020 CTR plan.

The City of Edmonds' CTR Plan, as updated in 2008, is adopted wholly and incorporated herein by reference. [Ord. 2913 § 1, 1993].

17.95.030 Program compliance.

A. Applicability. The provisions of this chapter shall apply to any major employer within the corporate limits of the city of Edmonds. Employees will only be counted at their primary work site. The following classifications of employees are excluded from the counts of employees:

1. Seasonal agricultural employees, including seasonal employees of processors of agricultural products; and

2. Employees of construction work sites when the expected duration of the construction is less than two years.

B. Notification.

1. In addition to Edmond's established public notification for adoption of an ordinance, a summary of the ordinance that establishes this chapter, a notice of availability of the full text of the same, a notice of the requirements and criteria for major employers to comply with the same, and subsequent revisions shall be published at least once in a local newspaper of general public circulation, within 30 days after passage or revision of the same.

2. Known major employers located in the city of Edmonds are to receive written notification that they are subject to the ordinance codified in this chapter within thirty days after adoption.

3. A major employer that, for whatever reasons, does not receive notice within thirty days of adoption of the ordinance codified in this chapter must identify themselves to the city within ninety days of the adoption of the ordinance codified in this chapter. The employer shall comply with all requirements of new major employers as specified in ECDC 17.95.030 (C).

C. New Major Employers. Employers that meet the definition of major employer in this chapter must identify themselves to the city within ninety days of either moving into the boundaries of the City or growing in employment at a work site to 100 or more affected employees. Such employers shall be granted a minimum of ninety days to complete a baseline survey, and an additional ninety days to submit a CTR program once the baseline survey results are given to the employer. The CTR program will be developed in consultation with the city and implemented not more than ninety days after the program's approval. develop and submit a CTR program. Employers that do not identify themselves and implement

an approved CTR program according to this section are ninety are in violation of this chapter. New major employers shall have four years from the city's acceptance of the program to meet the CTR reduction goals as stated in the city's CTR plan.

D. Change in Status as a Major Employer. Any of the following changes in an employer's status will change the employer's CTR program requirements:

1. If an employer initially designated as a major employer no longer employs one hundred or more affected employees and will not employ one hundred or more affected employees for the next twelve months, that employer is no longer a major employer. It is the responsibility of the employer to notify the city that it is no longer a major employer.

2. If the same employer returns to the level of one hundred or more affected employees within the same twelve months, that employer will be considered a major employer for the entire twelve months, and will be subject to the same program requirements as other major employers.

3. If the same employer returns to the level of one hundred or more affected employees twelve or more months after its change in status to an unaffected employer, that employer shall be treated as a new major employer, and will be subject to the same program requirements as other new major employers.

E. Requirements for Employers. Major employers are required to make a good faith effort as defined in RCW 70.94.531 and this chapter, to develop and implement a CTR program that will encourage its employees to reduce VMT per employee and drive-alone commute trips. The CTR program must include the mandatory elements described below that are necessary to achieve the CTR goals incorporated into this chapter. The employer shall submit a description of its program to the city and provide an annual or biannual progress report to the city on employee commuting and progress toward meeting the SOV goals.

F. CTR Program Description Requirements. The CTR program description presents the strategies to be undertaken by an employer to achieve the commute trip reduction goals. The goals are stated in the city's CTR plan. Employers are encouraged to consider innovative strategies and combine program elements in a manner that will best suit their location, site characteristics, business type, and employees' commuting needs. Employers are further encouraged to cooperate with each other and to form or use transportation management organizations (TMOs) in developing and implementing CTR programs.

G. Description of Employer's CTR Program. At a minimum, the employer's description must include:

1. General description of the employment site location, transportation characteristics, and surrounding services, including unique conditions experienced by the employer or its employees;

2. Number of employees affected by the CTR program and total number of employees per worksite;

3. Documentation of compliance with the mandatory CTR program elements (as described in subsection H of this section);

4. Description of the additional elements included in the CTR program (as described in subsection I of this section); and

5. Schedule of implementation, assignment of responsibilities, and commitment to provide appropriate resources.

H. Mandatory Program Elements. Each employer's CTR program shall include the following mandatory elements:

1. Employee Transportation Coordinator. The employer shall designate an employee transportation coordinator (ETC) to administer the CTR program. The coordinator's name, location, and telephone number must be displayed prominently at each major work site.. The coordinator shall oversee all elements of the employer's CTR program and act as liaison between the employer and the city. A major employer with multiple sites may have one transportation coordinator for all sites. The employer shall negotiate with the city for the number of ETCs required.

2. Information Distribution. Information about alternatives to SOV commuting shall be provided to employees at least twice a year. One of the items distributed must be a description of the employer's worksite program. Each employer's program description and annual report must report the information distributed and the method of distribution.

3. Annual or Biannual Progress Report. The CTR program must include an annual or biannual review of employee commuting and of progress and good faith efforts toward meeting the SOV and VMT reduction goals. Determination of annual or biannual reporting requirement is dependent on worksite commute trip reduction performance and the city will advise the major employer of required report frequency. Major employers shall file an annual or biannual progress report with the city in accordance with the format established by this chapter and consistent with the CTR Board guidelines. The report shall describe each of the CTR measures that were in effect for the previous year, the results of any commuter surveys undertaken during the year, and the number of employees participating in CTR programs. Within the report, the employer should evaluate the effectiveness of the CTR program and, if necessary, propose modification to achieve the CTR goals. Survey information or approved alternative information must be provided every two years after program implementation begins.

4. Biannual Survey or Measurement. In addition to the specific program baseline measurement, employers shall conduct a program evaluation as a means of determining worksite progress toward meeting CTR goals. As part of the program evaluation, the employer shall distribute and collect Commute Trip Reduction Program Employee Questionnaires (surveys) at least once every two years, and achieve a 70 percent response rate from employees at the worksite.

5. Annual Worksite Promotion of Employer CTR Program. Major employers will hold at least one annual "transportation fair" or equivalent promotion which is available to all employees at each affected worksite.

6. ETC Training. ETC will be required to attend an ETC basic training session within six months of appointment.

7. Employer Notification. Employers will be required to notify the jurisdiction or designee when there are proposed changes to their CTR program, changes in ETC or contact information, and/or changes in number of employees at the worksite.

8. ETC Networking/Advanced Training. ETCs will be required to attend at least six hours of networking or advanced training per year. Training and networking sessions may include marketing CTR programs to employees, trip planning, ridesharing, joint promotions and networking meetings.

I. Additional Program Elements. In addition to the specific program elements described above, the employer's CTR program shall include additional elements needed to meet CTR goals. Elements may include, but are not limited to, one or more of the following:

1. Provision of preferential parking or reduced parking charges, or both, for high-occupancy vehicles;
2. Instituting or increasing parking charges for SOVs;
3. Provision of commuter ride matching services to facilitate employee ride sharing for commute trips;
4. Provision of subsidies for transit fares;
5. Provision of vans for vanpools;
6. Provision of subsidies for carpools or vanpools;
7. Permitting the use of the employer's vehicles for carpooling or vanpooling;
8. Permitting flexible work schedules to facilitate employees' use of transit, carpools, or vanpools;
9. Cooperation with transportation providers to provide additional regular or express service to the work site;
10. Construction of special loading and unloading facilities for transit, carpool, and vanpool users;
11. Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;
12. Provision of a program of parking incentives such as a rebate for employees who do not use the parking facilities;
13. Establishment of a program to permit employees to work part-time or full-time at home or at an alternative work site closer to their homes;
14. Establishment of a program of alternative work schedules, such as compressed work weeks which reduce commuting;
15. Promotional activities for ride sharing and transit, as well as fixed commuter information centers;
16. Guaranteed rides in emergency situations for ride sharers;
17. Implementation of other measures designed to facilitate the use of high-occupancy vehicles, such as on-site day care facilities and emergency taxi services; and
18. Reduction of parking provided in accordance with the city of Edmonds' Community Development Code.

J. Record Keeping. Major employers shall include a list of the records they will keep as part of the CTR program they submit to the city for approval. Records shall reflect the measures selected by the employer. For example, an employer providing transit and vanpool pass subsidies shall keep monthly

records of pass sales; employers with parking charges and reduced rates for carpools and vanpools shall record parking pass sales by type. Employers will maintain all records listed in their CTR program for a minimum of 48 months. The city of Edmonds and the employer shall agree on the record keeping requirements as part of the employer's CTR program.

K. Schedule and Process for CTR Reports.

1. CTR Program. Not more than ninety days after the adoption of the ordinance codified in this chapter, or within ninety days after an employer becomes subject to the provisions of this chapter, the employer shall develop a CTR program and shall submit to the city a description of that program for review.

2. CTR Annual Progress Reports. Upon review of an employer's initial CTR program, the city shall establish the employer's annual reporting date, which shall not be less than twelve months from the day the program is submitted. Annually or biannually on the employer's reporting date, the employer shall submit to the city the annual or biannual CTR report.

3. Document Review. The city shall provide the employer with written notification within thirty days if a CTR program was approved or deemed unacceptable.

4. Requirements. Initial program descriptions will be deemed acceptable if:

a. All required information on the program description form is provided; and

b. The program description includes the following information:

i. Name, location and telephone number of the employee transportation coordinator for each work site;

ii. Plan for and documentation of regular distribution of information to employees about the employer's CTR program at the work site, including alternatives to driving alone to work;

iii. Plan for and implementation of at least one additional measure designed to achieve the applicable goal.

5. Annual Reports. Annual reports will be deemed acceptable if the annual report form is complete and contains information about implementation of the prior year's program elements and proposed new program elements and implementation schedule. Annual reports must also contain a review of employee commuting and report of progress toward meeting SOV goals.

6. Acceptance. The notification must give cause for the rejection. The employer shall have thirty days to resubmit a modified program. If the employer receives no written notification of extension of the review period for the CTR program or comment on the CTR program or annual report within ninety days of submission, the employer's program or annual report is deemed accepted. The city may extend the review period up to ninety days. The implementation date for the employer's CTR program will be extended an equivalent number of days.

L. Modification of CTR Program Elements. Any major employer may request that the city allow the modification of CTR program elements, other than the mandatory elements specified in this chapter, including record keeping requirements. Such request may be granted if one of the following conditions exist:

1. The employer can demonstrate it would be unable to comply with the CTR program elements for reasons beyond the control of the employer;

2. The employer can demonstrate that compliance with the program elements would constitute an undue hardship.

M. Extensions. An employer may request additional time to submit a CTR program or CTR annual progress report, or to implement or modify a program. Such requests shall be made in writing no less than thirty days before the due date for which the extension is being requested. Requests must be made in writing. Extensions not to exceed ninety days shall be considered for reasonable causes. The city shall grant or deny the employer's extension request in writing within ten working days of receipt. If there is no response issued to the employer, an extension is automatically granted for thirty days. Extensions shall not exempt an employer from any responsibility in meeting program goals. Extensions granted due to delays or difficulties with any program element(s) shall not be cause for discontinuing or failing to implement other program elements. An employer's annual reporting date shall not be adjusted permanently as a result of these extensions. An employer's annual reporting date may be extended at the discretion of the community services director or his/her designee.

N. Implementation of Employer's CTR Program. Unless extensions are granted, the employer shall implement the approved CTR program not more than ninety days after receiving written notice from the city that the program has been approved or with the expiration of the program review period without receiving notice from the city.

O. Criteria for Program Modification. The following criteria shall be applied in determining requirements for employer CTR program modifications.

1. If an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this chapter, and meets either or both applicable goals, the employer has satisfied the objectives of the CTR plan and will not be required to modify its CTR program.

2. If an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this chapter, but has not met or is not likely to meet the applicable SOV or VMT goal, the city of Edmonds shall work collaboratively with the employer to make modifications to its CTR program. After agreeing on modifications, the employer shall submit a revised CTR program to the city for approval within thirty days of reaching an agreement.

3. If an employer fails to make good faith efforts as defined in RCW 70.94.534(2) and this chapter, and fails to meet the applicable SOV or VMT reduction goal, the city shall work collaboratively with the employer to identify modifications to the CTR program and shall direct the employer to revise its program within thirty days to incorporate the modifications. In response to the recommended modifications, the employer shall submit a revised CTR program description, including the requested modifications or equivalent measures, within thirty days of receiving written notice to revise its program. The city shall review the revisions and notify the employer of acceptance or rejection of the revised program. If a revised program is not accepted, the city will send a written notice to that major employer within thirty days and, if necessary, require the employer to attend a conference with program review staff for the purpose of reaching a consensus on the required program. A final decision on the required program will be issued in writing by the city within ten working days of the conference.

17.95.040 General.

A. Enforcement.

1. Compliance. For purposes of this section, compliance shall mean fully implementing all provisions in an accepted CTR program or meeting or exceeding VMT and SOV goals of this chapter.

2. Failure to implement an approved CTR program, unless the program elements that are carried out can be shown through quantifiable evidence to meet or exceed VMT and SOV goals are specified in this chapter. Failure to implement a CTR program includes but is not limited to:

- a. Failure of any major employer to submit a complete CTR program with the deadline specified in ECDC 17.95.030(K);
- b. Failure to submit required documentation for annual reports;
- c. Submission of fraudulent data;
- d. Failure to make a good faith effort, as defined in RCW 70.94.534(4) and this chapter;
- e. Failure to modify a CTR program found to be unacceptable by the city under ECDC 17.95.030(K)(3).

3. Penalties. No major employer with an approved CTR program may be held liable for the failure to reach the applicable SOV or VMT goals. The city may at its discretion exercise the following alternative remedy:

- a. Civil Infraction. Each day of failure by an employer to:
 - i. Implement a commute reduction program; or
 - ii. Modify an unacceptable commute reduction program shall constitute a separate violation and shall be considered to be a civil infraction punishable by a penalty for violation of up to \$250.00 per day. Major employers may appeal such civil penalties pursuant to the provisions of RCW 7.80.100.
- b. Nuisance and Abatement. Each day of failure by an employer to:
 - i. Implement a commute reduction program; or
 - ii. Modify an unacceptable commute reduction program shall also constitute a public nuisance and may be abated as provided in accordance with the provisions of Chapter 20.110 ECDC. Any violation shall be processed and shall be appealable as provided in Chapter 20.110 ECDC.
- c. It shall not be considered a failure to implement the CTR program, if an employer's inability to implement an element of a CTR program was the result of an inability to reach agreement within the preceding twelve-month period with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith. Unionized employers shall be presumed to act in good faith compliance if they:
 - i. Propose to a recognized union any provision of the employer's CTR program that is subject to bargaining as defined by the National Labor Relations Act; and
 - ii. Advise the union of the existence of the statute and the mandates of the CTR program approved by the city and advise the union that the proposal being made is necessary for compliance with state law (RCW 70.94.531).

B. Exemptions or Goal Modifications.

1. Exemptions. A major employer may submit a request to the city to grant an exemption from all CTR program requirements or penalties for a particular work site. The employer must demonstrate that it would experience undue hardship in complying with the requirements of the ordinance as a result of the characteristics of its business, its work force, or its location(s). An exemption may be granted if and only if the major employer demonstrates that it faces extraordinary circumstance, such as bankruptcy, and is unable to implement any measures that could reduce the proportion of SOV trips and VMT per employee. Exemptions may be granted by the city at any time based on written notice provided by the major employer. The notice should clearly explain the conditions for which the major employer is seeking an exemption from the requirements of the CTR program. The city shall review annually all employers receiving exemptions, and shall determine whether the exemption will be in effect during the following program year.

2. Modification of CTR Program Goals. Prior to implementation, a major employer may request from the city a modification of program goals. Grounds for granting modification and the associated modification will be determined on a case-by-case basis and include the following:

a. Specific employees or groups of employees who are required to drive alone to work as a condition of employment may be exempted from a worksite's CTR program. Exemptions may also be granted for employees who work variable shifts throughout the year and who do not rotate as a group to identical shifts. The city shall review annually all employee exemption requests, and shall determine whether the exemption will be in effect during the following program year.

b. A major employer may request that the city modify its CTR program goals. Such requests shall be filed in writing at least sixty days prior to the date the worksite is required to submit its program description or annual report. The goal modification request must clearly explain why the worksite is unable to achieve the applicable goal. The worksite must also demonstrate that it has implemented all of the elements contained in its approved CTR program. The city will review and grant or deny requests for goal modifications in accordance with procedures and criteria identified in the CTR Board guidelines. An employer may not request a modification of the applicable goals until one year after the city approval of its initial program description or annual report.

C. Appeals of Final Decision. Major employers may file a written appeal of the city's final decision regarding the following actions:

1. Rejection of an employer's proposed program;

2. Denial of an employer's requests for a waiver or modification of any of the requirements of this chapter or a modification of the employer's program;

Such appeals must be filed with the city within ten days after the employer receives notice of a final decision. Timely appeals shall be heard by the city's hearing examiner. The hearing examiner's decision shall be final, and may be appealed to the city council pursuant to ECDC 20.105.010(c) et seq. Determinations on appeals shall be based on whether the decision being appealed was consistent with this chapter or applicable law.

D. Third Party Liability. It is expressly the purpose of this chapter to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefitted by the terms of this chapter.

It is the specific intent of this chapter that no provisions nor any term used in this chapter is intended to impose any duty whatsoever upon the city or any of its officers or employees, for whom the implementation and enforcement of this chapter shall be discretionary and not mandatory.

Nothing contained in this chapter is intended nor shall be construed to create or form the basis of any liability on the part of the city, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the city related in any manner to the enforcement of this chapter by its officers, employees or agents. [Ord. 3242 § 1, 1999; Ord. 2913 § 1, 1993].

Section 2. **Severability.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. **Effective Date.** This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:



MAYOR GARY HAAKENSEN

ATTEST/AUTHENTICATED:



CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 

W. SCOTT SNYDER

FILED WITH THE CITY CLERK:	12/12/2008
PASSED BY THE CITY COUNCIL:	12/16/2008
PUBLISHED:	12/22/2008
EFFECTIVE DATE:	12/27/2008
ORDINANCE NO. <u>3719</u>	

SUMMARY OF ORDINANCE NO. 3719

of the City of Edmonds, Washington

On the 16th day of December, 2008, the City Council of the City of Edmonds passed Ordinance No. 3719. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE of the City of Edmonds, Washington, amending Edmonds Commute Trip Reduction (CTR) Plan and implementing measures as required by RCW 70.94.527 by amending Chapter 17.95 of the Edmonds Community Development Code; providing for severability; and setting an effective date.

The full text of this Ordinance will be mailed upon request.

DATED this 17th day of December, 2008.

CITY CLERK, SANDRA S. CHASE

Affidavit of Publication

STATE OF WASHINGTON,
COUNTY OF SNOHOMISH

}

S.S.

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice



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The full text of this Ordinance will be mailed upon request.
DATED this 17th day of December, 2008.

CITY CLERK, SANDRA S. CHASE

Published: December 22, 2008.

Summary of Ordinance No. 3719

Amending the CTR Plan

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

December 22, 2008

and that said newspaper was regularly distributed to its subscribers during all of said period.

Jody Snell

Principal Clerk

Subscribed and sworn to before me this

22nd

day of

December, 2008

Robbie J. Alf

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

Account Name: City of Edmonds

Account Number: 101456

Order Number: 0001628689

